

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

TREVOR FITZGIBBON

Plaintiff,

V.

JESSELYN A. RADACK

Defendant.

Case No. 3:19-cv-477-REP

**TRIAL BY JURY  
IS DEMANDED**

# THIRD AMENDED COMPLAINT

Plaintiff, Trevor Fitzgibbon (“Fitzgibbon” or “Plaintiff”), by counsel, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure (the “Rules”) and the Court’s Order entered on May 1, 2020 [*ECF No. 80*], files the following Third Amended Complaint against Defendant, Jesselyn A. Radack (“Radack”).

Plaintiff seeks (a) compensatory damages and punitive damages in an amount not less than **\$5,350,000.00**, (b) prejudgment interest on the principal sum awarded by the Jury from April 9, 2019 to the date of Judgment at the rate of six percent (6%) per year, (c) reasonable attorney's fees in an amount to be determined by the Court, but not less than **\$250,000.00**, pursuant to contract and Rule 54(d)(2), and (d) court costs – arising out of Defendant Radack's breach of contract, defamation and common law conspiracy.

## **I. INTRODUCTION**

1. Jesselyn Radack is a deceitful and spiteful abuser of social media.

2. On April 26, 2019, the United States District Court for the Eastern District of Virginia held Radack in contempt. In its Order, the Court specifically found that:

Neither contrition nor emotional distress nor illness nor financial difficulties can excuse deliberate misconduct of this sort by any litigant, much less by a lawyer. And, the record here shows that Radack is a sharp-tongued, mean-spirited, proliferous user of social media. Her conduct here is just more of the same. Neither contrition nor emotional distress nor illness nor financial distress have caused Radack to ameliorate her penchant for nasty social media communication.

[*Fitzgibbon v. Radack*, Case 3:18-cv-247 (Document 97, p. 3)].

3. This case is about Radack's breach of a settlement agreement and her continuing use of Twitter to publish false and defamatory statements about Fitzgibbon.

4. Fitzgibbon seeks money damages for the extreme and unconscionable defamation being perpetrated by Radack and her confederates. Radack's vengeful, indiscriminate and persistent use of social media to defame must be stopped. Radack holds a law license. She has committed criminal or deliberately wrongful acts that reflect adversely on her honesty, trustworthiness or fitness to practice law. She has engaged in conduct involving dishonesty, fraud, deceit and misrepresentation. She and her confederates cannot be allowed to use social media as a weapon to injure human beings. Radack should be punished for her unlawful actions and a very strong message needs to be sent to prevent others from acting in a similar way.

## **II. PARTIES**

5. Plaintiff, Trevor Fitzgibbon (“Fitzgibbon”), was born in Lynchburg, Virginia. He is 48-years old. He is a citizen of North Carolina. Fitzgibbon provides domestic and global public relations and communication strategy for clients in Virginia and elsewhere. Fitzgibbon’s clients include whistleblowers, authors, artists and activists.

6. Radack is a citizen of the District of Columbia. Through her business as an advisor to whistleblowers and Government leakers, Radack has deep ties to Virginia. She has multiple clients in Virginia for whom she provides substantial ongoing legal services. In addition, she consults and provides business advice to multiple persons in Virginia, including, without limitation, members of the Advisory Board of ExposeFacts. [<https://exposefacts.org/advisory-board/>]. Radack is a high-profile strategist, business advisor, attorney, author and lecturer. She regularly accepts speaking engagements, both in the United States (including Virginia) and abroad. Radack conducts her business, including advertising her services to clients and prospective clients in Virginia, by and through Twitter. Radack operates Twitter account, **@JesselynRadack**. She has over 36,500 followers. Many of Radack’s high-profile followers – *i.e.*, her audience to whom she tweets, promotes her causes, solicits and engages in business – live and work in Virginia. [*E.g.*, @RVAwonk; @JohnKiriakou; @barodi\_said; @MarkWarner; @andrewmcockburn; @B\_Ehrenreich; @MatthewPHoh; @joshgerstein; @AdamParkhomenko]. Radack published the tweets at issue in this action to each of these Virginians and hundreds of others. The tweets were read in Virginia and caused damage in Virginia.

### **III. JURISDICTION AND VENUE**

7. The United States District Court for the Eastern District of Virginia has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. The parties are citizens of different States and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest, costs and fees.

8. Radack is subject to personal jurisdiction in Virginia pursuant to Virginia's long-arm statute, § 8.01-328.1(A)(1), (A)(3) and (A)(4) and § 8.01-328.1(B) of the Code, as well as the Due Process Clause of the United States Constitution. She is subject to both general and specific personal jurisdiction. She engages in continuous and systematic business in Virginia. The contract at issue (settlement agreement) was accepted in Virginia; performed in Virginia; and is governed by Virginia law. Radack and her agents committed multiple independent torts and acts of defamation in whole or part in Virginia. Fitzgibbon suffered loss in Virginia, when, as a result of Radack's promises, Fitzgibbon agreed to dismiss his action against Radack that was pending in this Court. Fitzgibbon also suffered harm in Virginia where Radack published defamatory tweets to her followers and to Fitzgibbon's clients, colleagues and friends. Radack has minimum contacts with Virginia such that the exercise of personal jurisdiction over her comports with traditional notions of fair play and substantial justice and is consistent with the Due Process Clause of the United States Constitution. Radack's misrepresentations and persistent course of defamation has been purposefully directed at Fitzgibbon and Virginia.

9. Venue is proper in the Richmond Division of the United States District Court for the Eastern District of Virginia pursuant to Title 28 U.S.C. § 1391(b)(1) and (b)(2).

#### **IV. BACKGROUND FACTS**

10. On April 13, 2018, Fitzgibbon commenced an action against Radack in the United States District Court for the Eastern District of Virginia (Case 3:18-cv-247-REP) (the “Original Radack Action”). In a second amended complaint filed in the Original Radack Action [Document 60], Fitzgibbon alleged claims of malicious prosecution, defamation, insulting words, abuse of process, and conspiracy. In the Original Radack Action, Fitzgibbon sought money damages in the sum of \$10,350,000.00 as a result of Radack’s malicious prosecution, defamation and other wrongdoing.

11. In March and April 2019, after the District Court in the Original Radack Action entered an Order to Show Cause [Document 87] why Radack should not be held in contempt for violating a restraining order entered in the Original Radack Action [Document 41], Radack made multiple material representations to Fitzgibbon for the purpose of inducing Fitzgibbon to settle his claims against Radack and her employer, the Institute for Public Accuracy (“IPA”),<sup>1</sup> and release Radack and IPA from liability. Radack represented that:

- She would not tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube or any other social media platform, or any other print or media outlet, that mentions Fitzgibbon or that is of and concerning Fitzgibbon;

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<sup>1</sup> Fitzgibbon’s claims against IPA were the subject of a separate action. [Case 3:19-cv-102-REP (E.D. Va.)].

- She would not direct, request, encourage, entice, procure or otherwise cause any third party, including but not limited to any friends, colleagues, or clients, to tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube, any other social media platform, or any print or media outlet, that mentions Fitzgibbon or that is of and concerning Fitzgibbon;
- She would refrain from publishing, making, printing or communicating, electronically, orally, in writing, or in any other manner, to any third party (excluding her family members) or to the print or broadcast media, within social media of any nature, or on the Internet, any disparaging comments or words that would cause or contribute to Fitzgibbon being held in disrepute by the public.

(the “Radack Representations”).

12. Fitzgibbon reasonably and justifiably relied upon the Radack Representations by agreeing to settle the Original Radack Action, dismiss the Original Radack Action with prejudice, and release Radack and IPA from liability.

13. On April 9, 2019, Fitzgibbon signed a settlement agreement with Radack. The agreement is governed by Virginia law. Radack delivered the settlement checks to Virginia and made the representations that induced the settlement in Virginia. Fitzgibbon was induced by Radack’s representations to enter into the settlement agreement. But for Radack’s representations, Fitzgibbon would not have signed the settlement agreement.

#### **COUNT I – BREACH OF CONTRACT**

14. Paragraph 4 of the settlement agreement contains the following material terms and conditions:

a. The Parties each covenant and agree that they will not tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube or any other social media platform, or any other print or media outlet, that mentions the other or that is of and concerning the other. For purposes of this Agreement, a statement is “of and concerning” a Party if the publication was intended to refer to him/her and would be so understood by persons reading it who knew him/her or if the publication was in its description or identification such as to lead those who knew or knew of the Party to believe that the statement was intended to refer to him/her.

b. The Parties covenant and agree that they will not direct, request, encourage, entice, procure or otherwise cause any third party, including but not limited to any friends, colleagues, or clients of the other, to tweet, retweet, reply, like or otherwise post anything on Twitter, Facebook, YouTube, any other social media platform, or any print or media outlet, that mentions the other or that is of and concerning the other.

c. In addition to the mutual affirmative covenants in paragraphs 4(a) and 4(b) above, each Party covenants and agrees that they will refrain from publishing, making, printing or communicating, electronically, orally, in writing, or in any other manner, to any third party (excluding family members) or to the print or broadcast media, within social media of any nature, or on the Internet, any disparaging comments or words that would cause or contribute to such Party being held in disrepute by the public.

d. For purposes of this Agreement, “disparaging” means defamatory, derogatory, deprecating, detracting, and/or pejorative. Nothing herein is intended to restrain or otherwise prohibit disclosures, communications, statements, or comments compelled pursuant to lawful order or process of a judicial, administrative, civil or criminal authority or proceeding.

15. Paragraph 4(e) of the settlement agreement provides that:

e. The Parties acknowledge and agree that a material breach of the provisions of this paragraph 4 would result in significant damage to the non-breaching Party. The Parties hereby acknowledge and agree that the amount of damages in the event of a material breach of the provisions of this paragraph 4 would be difficult or impossible to determine and that the amount \$1,000 for each tweet, retweet, reply, like, post or comment that violates paragraphs 4(a), 4(b)( or 4(c) is the best and most accurate estimate of the damages the non-breaching Party would suffer in the event of a material breach of this paragraph 4, that such estimate is reasonable under the circumstances existing as of the date of this Agreement and under the circumstances that the Parties reasonably anticipate would exist at the time of such material breach and that the breaching Party agrees to pay the non-breaching Party that amount as liquidated damages, and not as a penalty, if the non-breaching Party asserts, and a court of competent jurisdiction confirms, such a material breach. The burden of proof in any action alleging a breach of this paragraph 4 shall be proof by clear and convincing evidence.

Although ¶ 4(e) provides a contract remedy (liquidated damages) in the event of a material breach of paragraph 4 of the settlement agreement, ¶ 4(e) does not and was not intended to afford the remedy for conduct that is independently tortious and actionable, such as defamation. *See Kappa Sigma Fraternity v. Richard G. Miller Memorial Foundation*, 2008 WL 445005 (E.D. Va. 2008) (counterclaim plaintiff alleged both



breach of a non-disparagement clause in a settlement agreement and defamation per se). Paragraph 4(e) was also never intended to prevent either party from pursuing a claim of defamation or seeking punitive damage for any independent, willful tort. *A&E Supply Co., Inc. v. Nationwide Mut. Ins. Co.*, 612 F.Supp. 760, 766 (W.D. Va. 1985) (“the court holds that it is proper to award punitive damages where there is an award of compensatory damages for breach of contract accompanied by proof of an independent, willful tort [defamation] beyond the mere breach of a duty imposed by the contract”).

16. Paragraph 12 of the settlement agreement provides that:

12. Confidentiality. The Parties agree that they will not disclose the terms and conditions of this Agreement to any person or entity, directly or indirectly. The Parties agree that they will jointly request, and/or jointly cooperate in requesting, that the approval of these settlement terms remain confidential and that the explicit terms of this settlement remain under seal. Nothing herein is intended to restrain or otherwise prohibit disclosures, communications, or comments (i) to the Parties’ attorneys, officers and directors, tax advisors, financial advisors, bankers, and spouses, or (ii) compelled pursuant to lawful order or process of a judicial, administrative, civil or criminal authority or proceeding, or (iii) as required or necessary to enforce this Agreement.

17. Paragraph 19 of the settlement agreement states that:

19. Enforcement of Agreement; Attorneys’ Fees. If any suit or action is filed by any Party to enforce any of the terms of this Agreement, the prevailing Party in such suit or action shall be entitled to recover all of their costs, expenses and attorney’s fees incurred in connection with such suit, including, without limitation, all costs, expenses and attorney’s fees incurred on any appeal, from the non-prevailing Party.

18. Fitzgibbon and Radack signed the settlement agreement on April 9, 2019.

19. The settlement agreement is a valid and enforceable contract.

20. After April 9, 2019, Radack breached the settlement agreement by (a) tweeting, retweeting, replying, liking or otherwise posting statements on Twitter that mentioned Fitzgibbon or that were of and concerning Fitzgibbon (*see below*), (b)



directing, requesting, encouraging, enticing, procuring or otherwise causing third parties, including, but not limited to, tweeps, friends, colleagues, or clients, to tweet, retweet, reply, like or otherwise post statements on Twitter that mentioned Fitzgibbon or that were of and concerning Fitzgibbon (*see below*), (c) publishing, making, printing or communicating to third parties (who were not family members) disparaging comments or words that would cause or contribute to Fitzgibbon being held in disrepute by the public (*see below*), and (d) by disclosing the terms and conditions of the settlement agreement to unauthorized persons, including Raymond Johansen and @jimmysllama (*see below*). The following tweets, retweets, replies, likes, posts and direct messages by Radack and/or her co-conspirators constitute a breach the settlement agreement:

20(a)



20(b)



20(c)



20(d)



20(e)



20(f)





20(g)




20(h)











20(i)


**unRAD-ACKted** @JesselynRadack · 19h




Please unfollow me if you also follow @Millenial1706, bc you unwittingly become a conduit for this kind of abuse:




 11
  8
  18
 


**Randy Credico** @Credico2016 · 17h





Wtf?

 3
 
 1
 


**@Kaidinn was suspended. Unity4J destroyer.**  
 @vcruytlczsdfa

Replying to @Credico2016 @JesselynRadack and @Millenial1706  
 Yes Randy it's by the "movement" unity4j who are working for serial rapist Fitzgibbon to harass Jesselyn into silence what he did to her. This is being spearheaded by Fitzgibbon, his girlfriend Diani, and unity4j's Suzie/Elizabeth/Caitlin/others.

8:31 PM · May 25, 2019 · [TweetDeck](#)

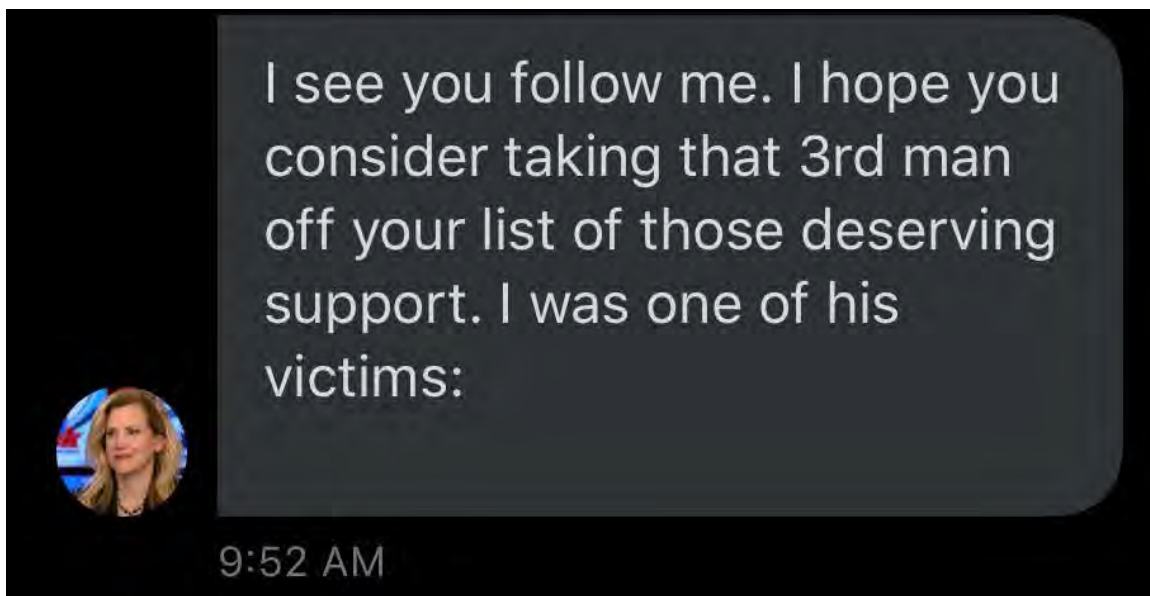

**unRAD-ACKted** @JesselynRadack · 2h

Replying to @vcruytlczsdfa @Credico2016 and @Millenial1706  
 Exactly.

20(j)



20(k)



[The “list” referred to by Radack in her direct message is the following tweet by the Whistleblower on June 8, 2019:



20(l)

As part of Settlement, to end YEARS of stalking, I withdrew (not retracted) my allegations bc Trump financier Ed Butowsky has been underwriting TF's retaliatory actions against multiple victims,

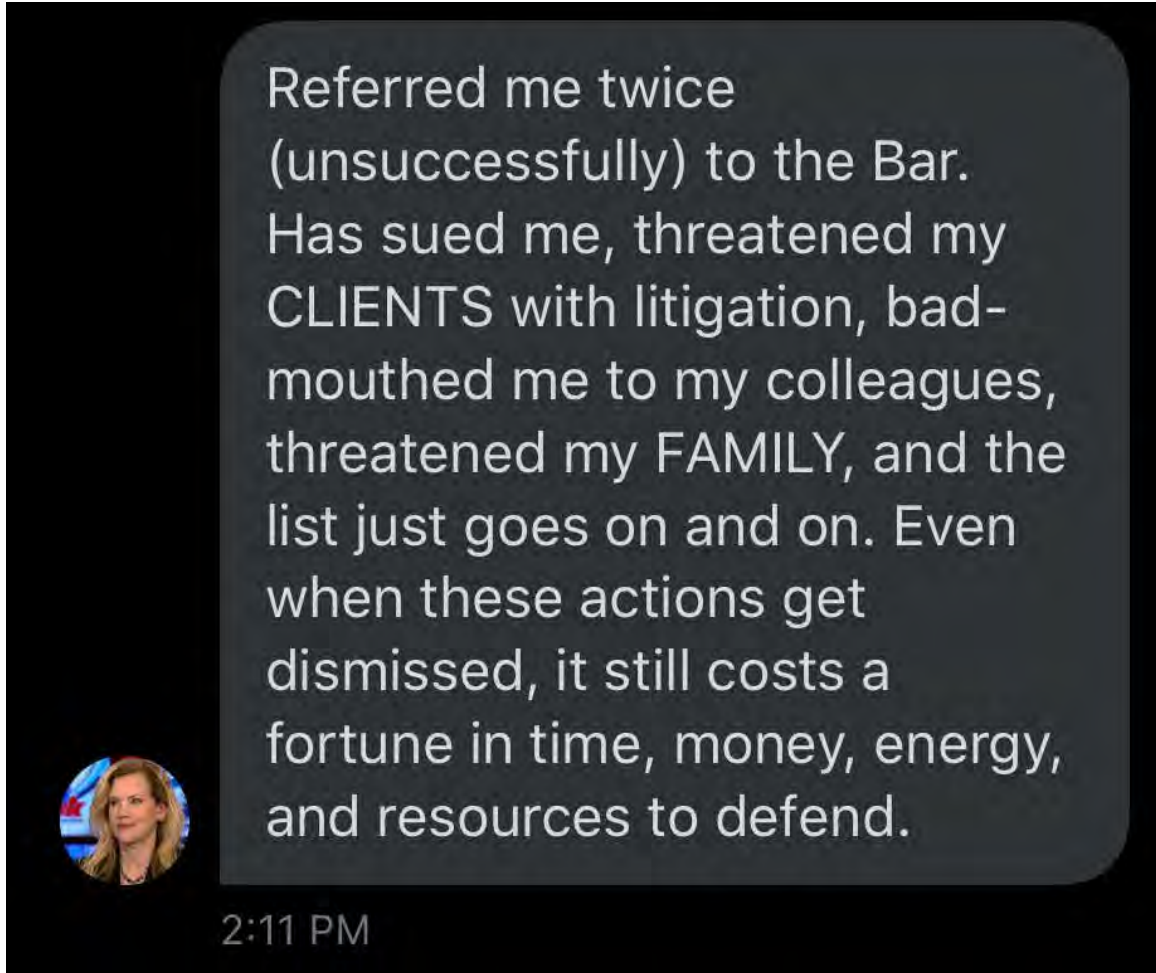


The Disturbing Story Of  
Widespread Sexual Assault Al...  
[huffpost.com](https://www.huffpost.com)



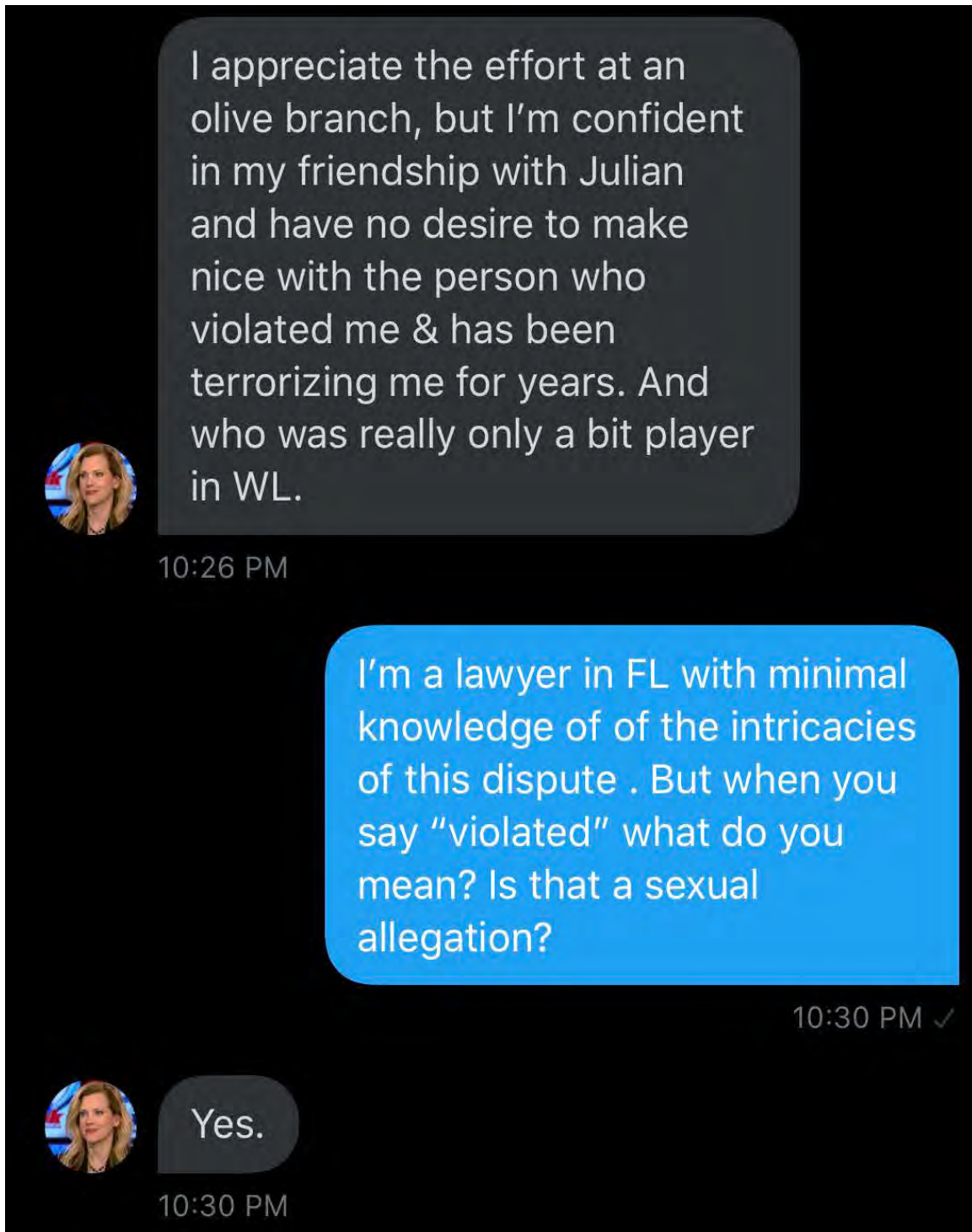
10:39 AM

20(m)





20(n)



20(o)





20(p)



20(q)



20(r)



[Although not mentioned by name, the reference in Radack's reply to "his picture" and "he" is to Fitzgibbon. Radack and Goldberg had many communications about Fitzgibbon. The subject matters of "intimate partner violence", *i.e.*, rape, fear, abuse,



coercion and threats mirror Radack's accusations concerning Fitzgibbon. Fitzgibbon is the only male who fits "every element on this wheel"].

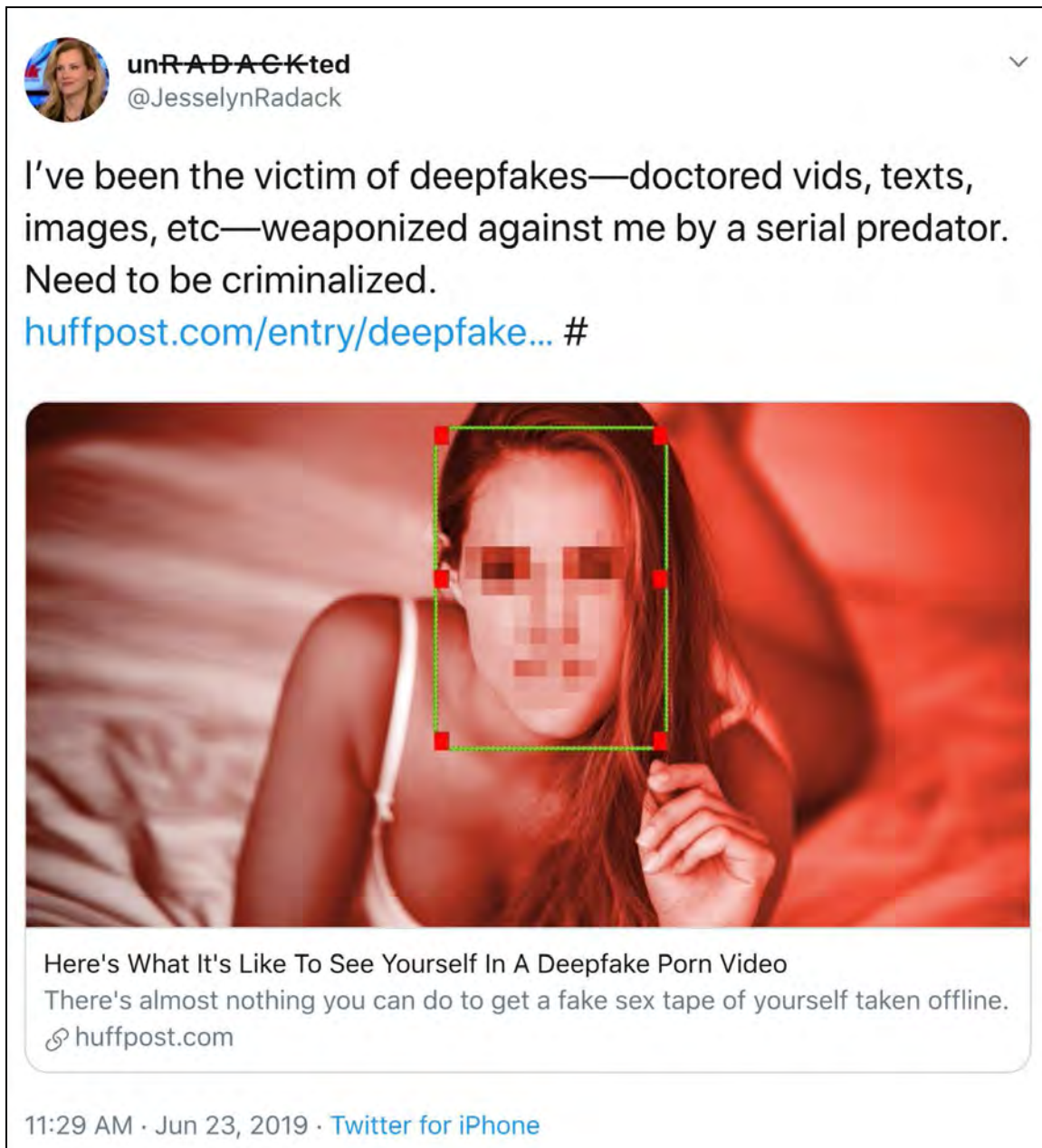
20(s)



[Although not mentioned by name, the reference to "predator" is to Fitzgibbon. In the past, Radack has repeatedly called Fitzgibbon a "predator". As is well-known publicly, Fitzgibbon formerly represented Julian Assange and WikiLeaks. In February 2019, journalist Elizabeth Vos ("Vos") wrote an article and tweeted about the Original Radack

Action (See, e.g., <https://disobedientmedia.com/2019/02/fitzgibbon-sues-the-institute-for-public-accuracy-for-alleged-defamation-by-jesselyn-radack/>; <https://twitter.com/ElizabethleaVos/status/1096470499922718723>). Vos' article and tweets are largely supportive of Fitzgibbon. Thus, Radack describes Vos as an "eager stenographer" for Fitzgibbon.].

20(t)



[In this tweet, Radack describes herself as the “victim” of doctored the texts and images that were “weaponized” against her by a “serial predator”. This tweet is of and concerning Fitzgibbon and the texts and images refer to the texts and selfies that were at issue in the Original Radack Action. In many prior tweets, Radack has claimed that Fitzgibbon is a “serial predator” and that he “weaponized” information (which he did not). Fitzgibbon is the only person Radack consistently refers to as a “serial predator”].

20(u)



[Although not mentioned by name, the “assailant” is Fitzgibbon. Indeed, Fitzgibbon is the only “assailant” that Radack has ever identified. In many other tweets, Radack and her confederates accuse Fitzgibbon of setting up a Twitter account to “stalk” and “threaten” Radack, her clients, family and friends. (*See, e.g., ¶¶ 20(d), 20(m)* above)].



20(v)


**Angelo Carusone**  @GoAngelo · Jun 3, 2018  
 Sinclair's @SharylAttkisson did a full segment today defending widely recognized sexual harasser Trevor Fitzgibbon, dismissed the reports from \*many\* women, never once even featured a single statement from the women that came forward. Just defended a sexual harasser.  
[Show this thread](#)

 23  106  296 


**General Sands** @MilitiaChief · Jun 19  
 @GoAngelo Julian Assange's PR man Trevor FitzGibbon contacted me recently. @Snowden's lawyer @JesselynRadack says he raped her. I met Sharyl Attkisson at Clinton's #whistleblower summit. I know for a fact @georgesoros funds Snowden, Manning & Assange. My name is General Sands.



https://fas.org/sgp/jud/manning/appeal-uscr16.pdf

USA v. Bradley (Chelsea) Manning: Army Court of Appeals affirms prior findings of guilt 1 / 26

**UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

Before  
CAMPANELLA, CELTNIEKS, and HAGLER  
Appellate Military Judges

**UNITED STATES, Appellee**  
v.  
**Private First Class BRADLEY E. MANNING (nka CHELSEA E. MANNING)**  
**United States Army, Appellant**

ARMY 20130739

U.S. Army Military District of Washington  
Denise R. Lind, Military Judge  
Colonel Corey J. Bradley, Staff Judge Advocate (pretrial)  
Colonel James R. Agar, II, Staff Judge Advocate (post-trial)

For Appellant: Vincent J. Ward, Esquire (argued); Captain J. David Hammond, JA;

  2  1 


**unRADACKted**  
 @JesselynRadack  
 Replying to @MilitiaChief @SharylAttkisson and 3 others  
 Wrong on 3 counts. 1) He was never #Assange's "PR man," 2) Anyone can be an amicus on a brief, 3) Soros is not funding @Snowden or @xychelsea.  
 1:01 PM · Jun 26, 2019 · [Twitter for iPhone](#)

20(w)



20(x)





20(y)



[Although not mentioned by name, this tweet is of and concerning Fitzgibbon. Each of the bullet points describes something that Fitzgibbon has done or that Radack has accused him in the past of doing. The information is very specific and is immediately attributable to Fitzgibbon.].

20(z)



20(aa)



20(bb)

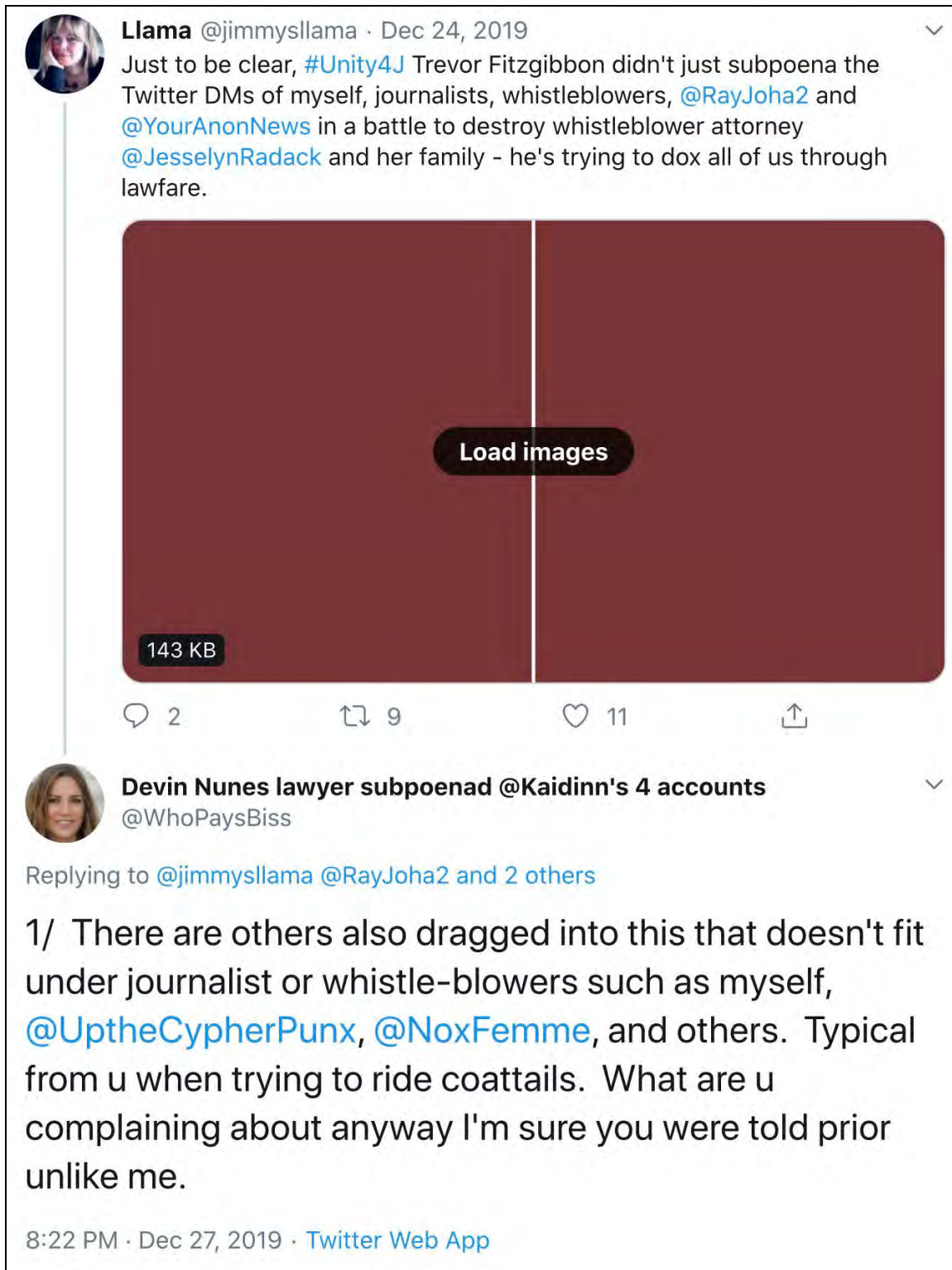


20(cc)



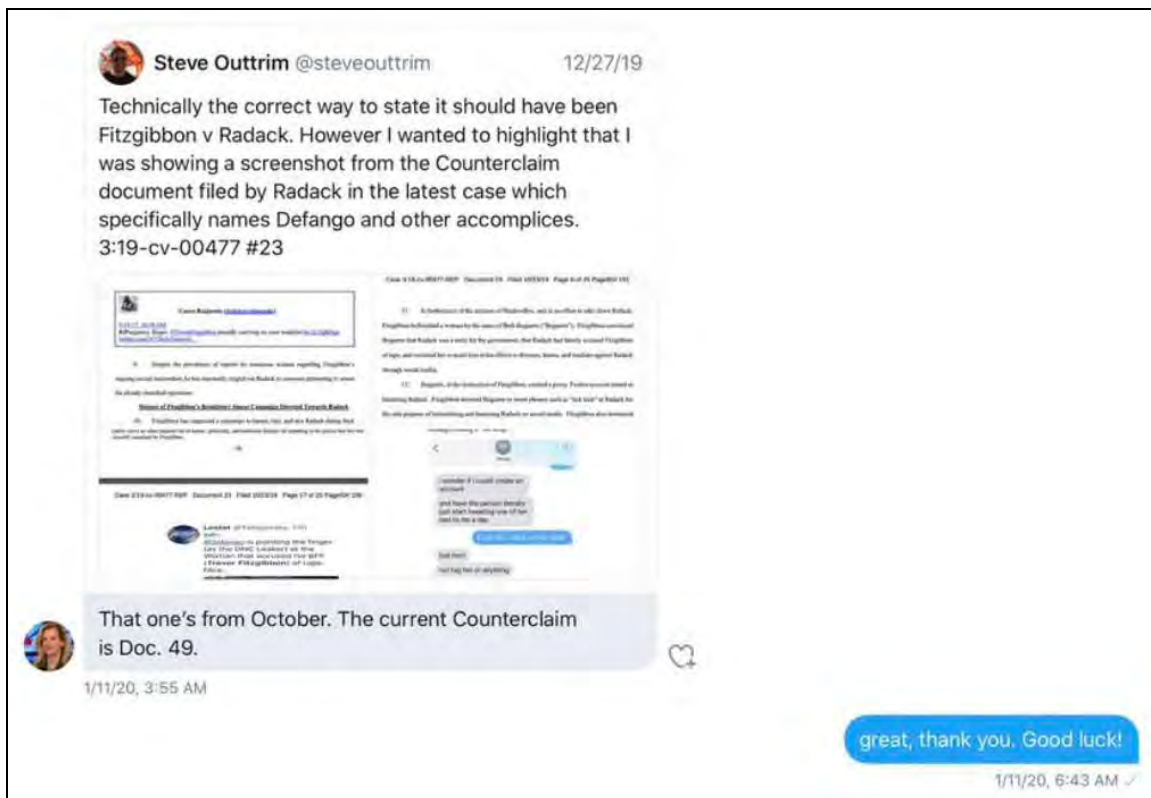


20(dd)





20(ee)



20(ff)




20(gg)







20(hh)


**From:** jesselyn radack <[jar3rad@gmail.com](mailto:jar3rad@gmail.com)>  
**Date:** January 8, 2020 at 2:28:51 PM EST  
**To:** Raymond Johansen <[Raymond.Johansen@hacktivistculture.com](mailto:Raymond.Johansen@hacktivistculture.com)>, Bailey Lamon <[bailey.lamon@protonmail.ch](mailto:bailey.lamon@protonmail.ch)>  
**Subject:** My counterclaim against TF

20(ii)



**Ella Mae** @StBridgetAthena · Jan 10  
Yeah. When I was going through things today it looked like there were two?

 6   



**unRADACKted**  
@JesselynRadack

Replying to @uno0112020 @StBridgetAthena and 15 others

Dismissed.

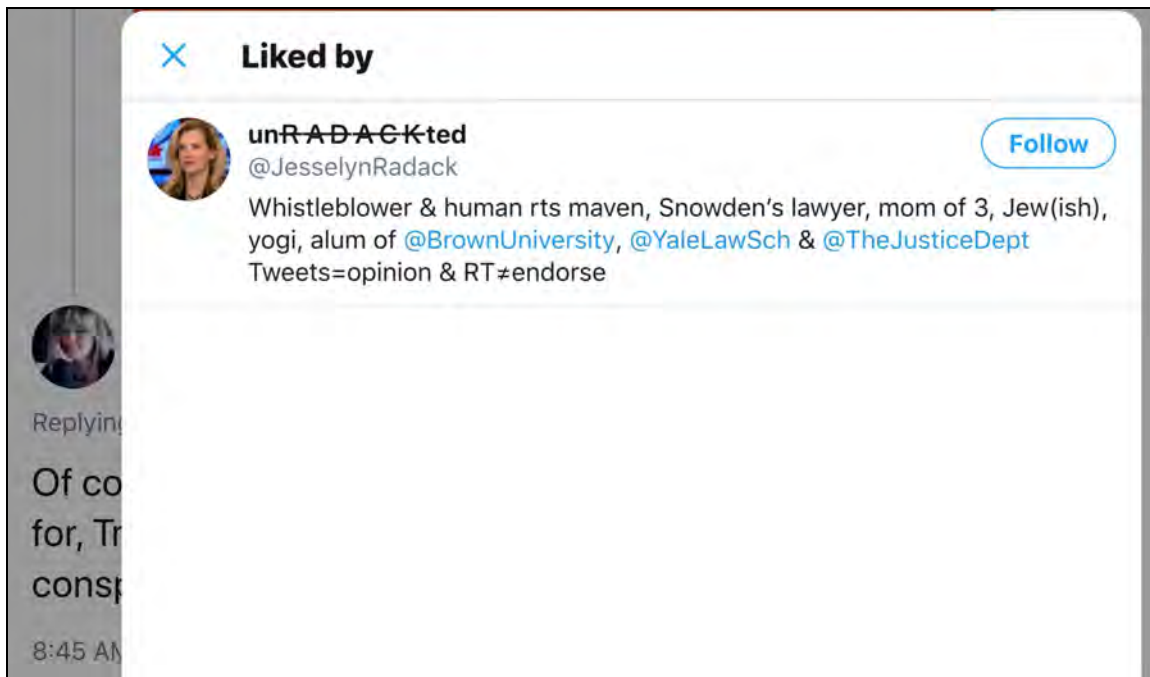
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

TREVOR FITZGIBBON	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:18-cv-247-REP
	)	



20(jj)



20(kk)



20(11)





[Although not mentioned by name, this tweet and the corresponding statement published on the GoFundMe website is of and concerning Fitzgibbon and this lawsuit.].



20(mm)



21. In addition to the above tweets, retweets, replies, liked, posts, and direct messages, Radack has, upon information and belief, sent many more direct messages and encrypted messages and emails to Johansen and others that mention Fitzgibbon, that are of and concerning Fitzgibbon, and/or that disparage Fitzgibbon. Radack refuses to disclose these documents, which are in her exclusive possession and control. Fitzgibbon relies on these documents and incorporates them herein in support of Counts I, II and III.

22. As a direct result of Radack's breaches of contract, Fitzgibbon suffered damage and incurred loss, including, without limitation, liquidated damages, loss of income and injury to business, attorney's fees, court costs, and other damages in an amount to be determined by the evidence, but not less than \$500,000.00.

## **COUNT II – DEFAMATION PER SE**

23. The statements by Radack in paragraphs 20(h), 20(i), 20(j), 20(k), 20(l), 20(m), 20(n), 20(o), 20(r), 20(s), 20(t), 20(u), 20(w), 20(x), 20(y), and 20(z) above are false and independently actionable as defamation.

24. The statements by Radack's co-conspirators in paragraphs 20(a), 20(b), 20(c), 20(d), 20(f), 20(p), 20(q), 20(aa), 20(bb), 20(cc), 20(kk) and 20(mm) above are false and independently actionable as defamation.

25. Radack ruthlessly published and republished multiple independently actionable false and defamatory statements of and concerning Fitzgibbon to third parties, including her Twitter followers in Virginia. These third parties, in turn, republished Radack's defamation on their Twitter feeds. The false and defamatory statements at issue in this action have been published and republished millions of times on Twitter.

26. On multiple occasions, Fitzgibbon requested Radack in writing to cease and desist from publishing false and defamatory statements on Twitter. Radack disregarded Fitzgibbons pleas.

27. By tweeting and retweeting, Radack knew or should have known that her false and defamatory statements would be republished over and over by third-parties millions of times to Fitzgibbon's detriment and injury. Republication by Radack's Twitter followers was the natural and probable consequence of Radack's actions and was actually and/or presumptively authorized by Radack. In addition to her original publications, Radack is liable for the republication of the false and defamatory statements by third-parties under the doctrine announced in *Weaver v. Home Beneficial Co.*, 199 Va. 196, 200, 98 S.E.2d 687 (1957) ("where the words declared on are slanderous per se their repetition by others is the natural and probable result of the original slander.").

28. Radack's false statements constitute defamation *per se*. The statements accuse and impute to Trevor Fitzgibbon the commission of felonies and crimes involving moral turpitude and for which Fitzgibbon may be punished and imprisoned in a state or

federal institution. Radack's statements also impute to Fitzgibbon an unfitness to perform the duties of an office or employment for profit, or the want of integrity in the discharge of the duties of such office or employment. Radack's statements also severely prejudice Fitzgibbon in his profession or trade.

29. Radack's false statements harmed Fitzgibbon.

30. Radack made the false statements with actual or constructive knowledge that they were false or with reckless disregard for whether they were false. Radack acted with actual malice and reckless disregard for the truth for the following reasons:

a. Radack knew her statements were false – the text messages and selfies demonstrate that Radack was not raped or assaulted by Fitzgibbon. Radack lied to the United States Attorney and lied in her tweets and direct messages.

b. Radack had a preconceived agenda to destroy Fitzgibbon's reputation with falsehoods.

c. After she was admonished to cease and desist, Radack continued to publish and republish false and scandalous statements and to use unnecessarily strong, violent, scandalous, and egregious language and insulting words, disproportionate to any occasion.

d. Radack excessively reiterated, repeated and continued to republish false and defamatory statements, and enticed others to do so out of a desire to hurt Fitzgibbon and to permanently stigmatize him.

31. Radack lacked reasonable grounds for any belief in the truth of her statements – statements that she publicly retracted on May 3, 2019.

32. As a direct result of Radack's defamation, Fitzgibbon suffered substantial damage and loss, including, but not limited to, presumed damages, actual damages, loss of business and income, pain and suffering, emotional distress and trauma, insult, anguish, stress and anxiety, public ridicule, humiliation, embarrassment, indignity, damage and injury to his reputation, costs, and other out-of-pocket expenses in the sum of \$5,000,000.00 or such greater amount as is determined by the Jury.

### **COUNT III – COMMON LAW CONSPIRACY**

33. Beginning in April 2019 and continuing through the present, Radack combined, associated, agreed or acted in concert with Raymond Johansen, ("Johansen")<sup>2</sup> Bailey Lamon ("Lamon"), "@Kaidinn", "@jimmysllama" (and with others unknown to Plaintiff without discovery and production of Radack's direct messages), for the express purpose of injuring Fitzgibbon in his business and reputation through the publication and republication of false and defamatory statements. In furtherance of the conspiracy and preconceived joint plan, Radack and her confederates orchestrated a scheme the unlawful purpose of which was to defame Fitzgibbon in an effort to destroy his reputation and business. Acting in concert, Radack and her co-conspirators utilized Twitter, encrypted email and encrypted communications software [e.g., <https://signal.org/>] to publish, republish and spread the defamation and character assassination.

34. The following facts and direct and circumstantial evidence support Plaintiff's contention that Radack conspired with Johansen, Lamon, @Kaidinn, @jimmysllama, and others:

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<sup>2</sup> Johansen, a reputed hacker, has multiple "personas", including "Razor1911". He communicates with Radack using Protonmail, Wire and/or Signal encrypted technologies.



- Emails between Radack and Johansen show that they are collaborating against Fitzgibbon, and tweets by Johansen confirm that Radack and Johansen are in communications. [See, e.g., <https://twitter.com/RayJoha2/status/1190342239693819905> (“When T.F. first attacked @JesselynRadack by suing her I was right there. A woman [Bogaerts] that had seen what he was planning reached out to me. **Since then I have been in touch with our friend Jess**”) (emphasis added)].

- The timing of the tweets, retweets, replies, likes and direct messages shows concerted action and purpose.

- The subject matters, language and messaging jointly employed in tweets, including coordinated references to “*years of stalking*”, repeatedly describing Plaintiff as a “*sexual predator*”, “*serial abuser*”, “*serial rapist*”, describing Radack as one of Plaintiff’s “*victims*”, representing that Plaintiff made threats against Radack’s “*clients*”, and that Diani Barreto is Plaintiff’s “*girlfriend*”, shows concert of action and purpose. For instance, on May 3, 2019 Johansen tweeted the following:



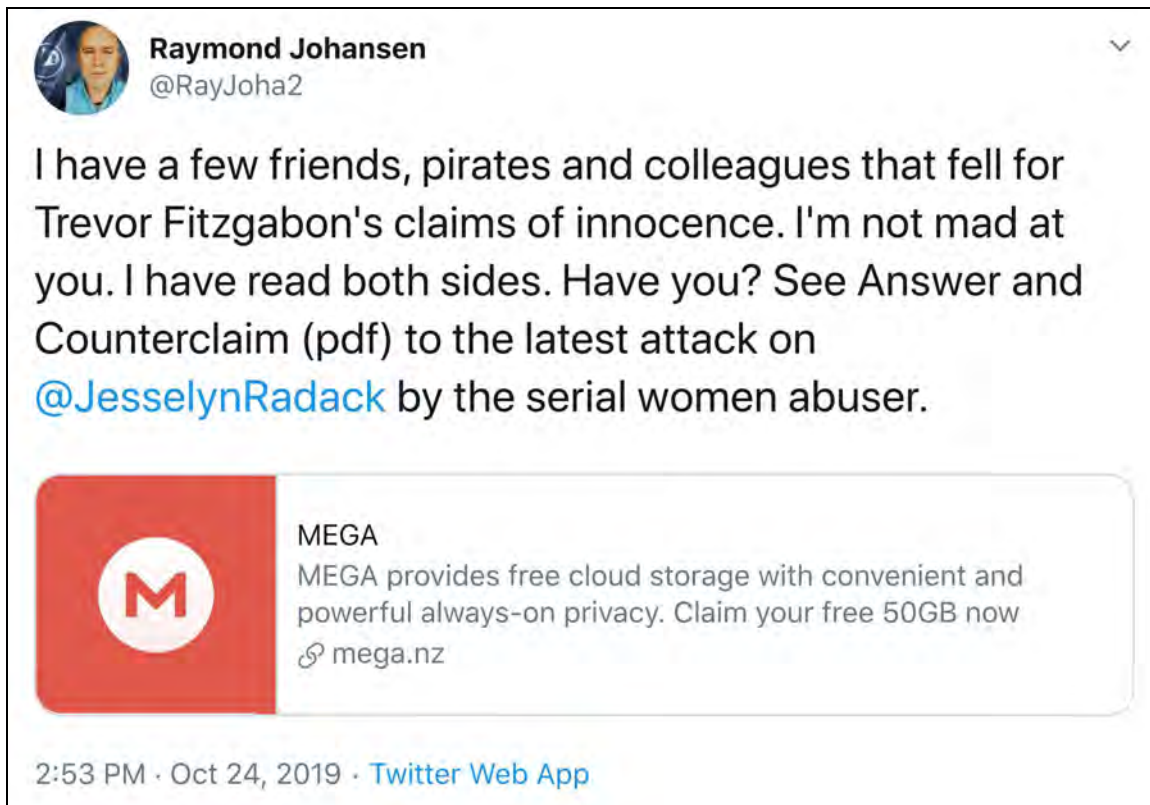
On June 8, 2019, Radack made the following statement to the Whistleblower:

As part of Settlement, to end  
YEARS of stalking, I withdrew  
(not retracted) my allegations

On June 8, 2019, Radack advised the Whistleblower that she was “one of his [Fitzgibbon’s] victims”. On November 3, 2019, @jimmysllama tweeted the same message:



- Constant retweeting, replying, liking, re-posting, tagging and reminders of each other’s statements shows concert of action and purpose.
- Sharing information and publishing information, such as parts of pleadings and even drafts of pleadings in furtherance of the conspiracy to defame, *e.g.*:



- Admissions by @Kaidinn, *e.g.*:





**Raymond is a sociopath! He sets out to destroy!**

@WhoPaysBiss

Obscene amount of time, work, and energy I put into working with Raymond on campaigns when we first met around Spring 2015. While the past year I stuck my neck out to help Jesselyn who's being targeted by a douchebag lawfarephag "lawyer" who sues COWS funded by GOP/MAGA donors.

10:29 PM · Dec 31, 2019 · [Twitter Web App](#)



**Devin Nunes lawyer subpoenad @Kaidinn's 4 accounts**

@WhoPaysBiss

I can't remember last time I spoke to Bailey. I'd tweet and dm Raymond in order to yell/poke him. I had less interactions with Jesselyn than I did with Ray when I would send her archived tweets of people because she had many of them blocked. But yeah a "conspiracy."  
[#bunnysec](#)

**COUNT IV – COMMON LAW CONSPIRACY**

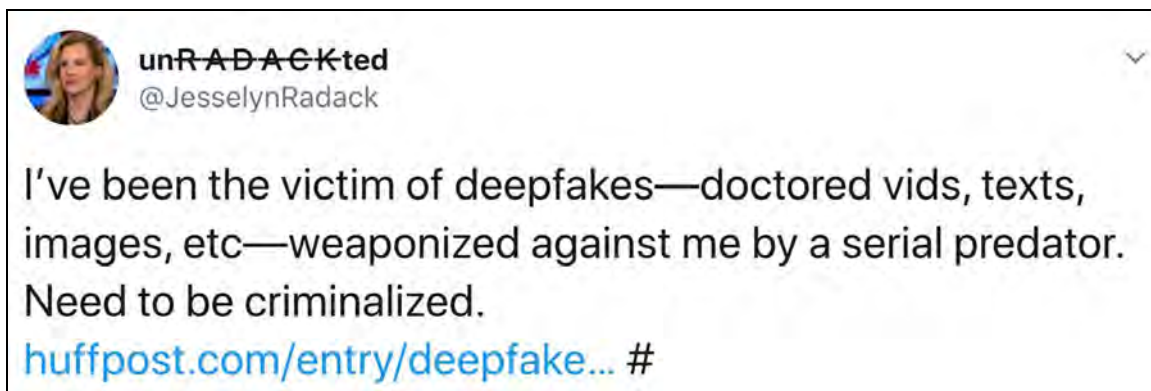
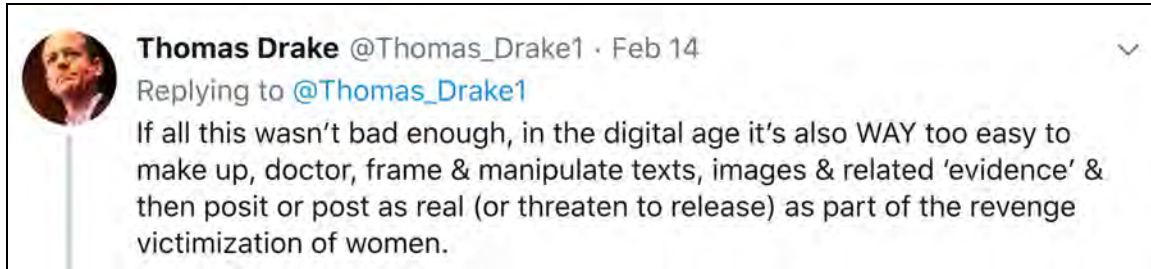
36. Beginning in April 2019 and continuing through the present, Radack combined, associated, agreed or acted in concert with Raymond Johansen, Bailey Lamon, “@Kaidinn” (and with others unknown to Plaintiff without discovery), for the express purpose of injuring Fitzgibbon in his business and reputation through the publication and

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6:26 AM · Jan 12, 2020 · [Twitter Web App](#)



- In concert with former client (and NSA leaker), Thomas Drake, manufacturing claims (**after-the-fact**) about evidence and victimization, including NSA-like claims about Radack's nude selfies and sexts, in a patho-conspiratorial attempt to re-write history and to fabricate a "rape" claim (re-victimize Plaintiff) on behalf of misandrist Radack, *e.g.*:



- Republishing the same defamatory material, *e.g. Publicist for Predator*, shows that Radack and Johansen are working together in a coordinated manner to defame Fitzgibbon.

- Jointly attacking third parties who write articles about Fitzgibbon, *e.g.*, Elizabeth Vos.

- Telephone records and direct messages that Radack refuses to produce.

35. Radack acted intentionally, purposefully, without lawful justification, and with the express knowledge that she was injuring Fitzgibbon.

36. Radack's actions constitute a common law conspiracy to defame.

37. Radack is liable for the false and defamatory statements published by Johansen, Lamon, @Kaidinn and @jimmysllama in furtherance of the conspiracy.

38. As a direct result of Radack's conspiracy, Fitzgibbon suffered damage and loss, including, but not limited to, actual damages, including, presumed damages and actual damages, loss and injury to his business, insult, pain and suffering, humiliation, embarrassment and injury to reputation, court costs, and other damages in the sum of \$5,000,000.00 or such greater amount as is determined by the Jury.

Trevor Fitzgibbon alleges the foregoing based upon personal knowledge, public statements of others, and records in his possession. He believes that substantial additional evidentiary support, which is in the exclusive possession of Radack and agents, surrogates, alter egos and other third-parties, including former clients of Fitzgibbon Media, will exist for the allegations and claims set forth above after a reasonable opportunity for discovery.

Fitzgibbon reserves the right to amend this Complaint upon production of Radack's direct messages and discovery of additional instances of Radack's wrongdoing.

### **CONCLUSION AND REQUEST FOR RELIEF**

WHEREFORE, Trevor Fitzgibbon respectfully requests the Court to enter Judgment against Jesselyn Radack as follows:

A. Compensatory damages in the amount of \$5,000,000.00 or such greater amount as is determined by the Jury;

B. Punitive damages in the amount of \$350,000.00 or the maximum amount allowed by law;

C. Prejudgment interest at the rate of 6% per year on the Principal Sum awarded by the Jury from April 9, 2019 to the date of Judgment;

D. Postjudgment interest at the rate of six percent (6%) per annum until paid;

E. Attorney's Fees and Costs;

F. Such other relief as is just and proper.

**TRIAL BY JURY IS DEMANDED**

DATED: May 18, 2020

TREVOR FITZGIBBON

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*Counsel for the Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2020 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for the Defendant and all interested parties receiving notices via CM/ECF.

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*Counsel for the Plaintiff*